BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

This case is clearly not controlled by the cases cited by the Circuit Court of Appeals. In *H. J. Heinz Company* v. *National Labor Relations Board,* 61 S. Ct. 320, 85 L. Ed. 303, 311 U. S. 514, a general foreman and several other foremen and forewomen, in charge of departments and factory buildings, actually engaged in disparaging the union in the employer's plant and threatening employees with discharge if they joined the union. There foremen had power to employ and discharge workmen in the plant and were considered by the employees to be representing the employer.

In *Consumer's Power Company* v. *National Labor Relations Board,* 113 F. (2d) 38, a supervisory foreman, in charge of twenty line crews, comprising some 300 men, went far beyond the grounds of strict neutrality in coercing employees to refrain from joining the union.

In the case of *Atlas Underwear Company* v. *National Labor Relations Board,* 116 F. (2d) 1020, the employer hired undercover men to spy on union activity, and there is nothing in that case which sustains the finding of the Circuit Court of Appeals under the rule of respondeat superior.

In *National Labor Relations Board* v. *Asheville Hosiery Company,* 108 F. (2d) 288, the supervisory employee who interfered with the union activity of the employees was treasurer and general manager of the plant and threatened a shut down of the plant if the unrest caused by union activity continued.

The facts in the case at bar are not even analogous to the facts in the above cases. Jesse Arthur, petitioner's foreman, was in charge of a few men and was without power to employ or discharge anyone. He was a small foreman in a comparatively small plant in a small town. He

talked, he expressed his individual opinions, his personal bias as all small foremen, in small plants, in small towns do all over this country. And he did not influence anyone against the union. The employees of petitioner formed their union just the same, inasmuch as they had already been advised by petitioner that they had a legal right to do so and that there was nothing he could do about it.

Arthur's statements were not made to several employees nor by an executive such as a factory superintendent or a foreman with authority to speak for his employer or to hire or discharge men in the plant. Consequently, Arthur's statements could not have had the force of threatening the security of the employment of any of the Hobart employees. Furthermore, these statements did not represent Hobart's attitude toward the formation of a union, which was expressed to Lester Williams, the president of the union, in the beginning of the activity toward organization.

The undisputed evidence is that Hobart said that the law gave his employees the right to organize, and to do as they pleased and that he would just have to deal with them as there was nothing he could do about it (R. 83-86).

It is well settled that so long as the employees are publicly assured by the employer in good faith of employer's neutrality and impartiality regarding labor organization and employees' membership therein, and no interference is imposed by the management, the fundamental purpose of the National Labor Relations Act is fulfilled.

It is also well settled that in the absence of any policy of proscribed discrimination an employer should not be held accountable for individual statements of opinion upon the part of a foreman not authorized by the employer and not resulting in interference with or domination of the right of the employees to organize.

The undisputed evidence in the record justifies the application of this statement of the law rather than that referred

to by the Circuit Court of Appeals and appearing in the cases cited by the Circuit Court of Appeals to support its finding and order against the petitioner of June 25, 1941.

N. L. R. B. v. *Sparks-Withington Company, et al.*, U. S. Court of Appeals, Sixth Circuit. Decided April 16, 1941. 119 F. (2d) 78;

E. I. DuPont De Nemours & Co. v. *N. L. R. B.*, U. S. Court of Appeals, 4th Circuit, 1940. 116 F. (2d) 388;

Martel Mills Corp. v. *N. L. R. B.*, 4th Circuit, 1940, 114 F. (2d) 624, 633, 634;

N. L. R. B. v. *Mathieson Alkali Works*, 114 F. (2d) 796, at 799, 802, 803;

N. L. R. B. v. *Sands Mnfg. Co.*, 306 U. S. 332, 59 S. Ct. 508;

N. L. R. B. v. *Whittier Mills Co.*, 5 Cir., 111 F. (2d), 474, 479.

Conclusion.

(1) The Circuit Court of Appeals, Sixth Circuit, erred in finding that there is substantial evidence in the record to support an order against the petitioner.

(2) The Circuit Court of Appeals, Sixth Circuit, cite inapplicable authorities to sustain their order against petitioner.

(3) Said decision is not in accordance with similar previous applicable decisions of the Circuit Court of Appeals, Sixth Circuit, and other Circuit Courts of Appeals.

(4) This decision is in direct conflict with decisions upon analogous facts rendered by the Circuit Court of Appeals, Sixth Circuit, and other Circuit Courts where, as in the instant case, substantial evidence clearly shows no violation of the National Labor Relations Act, under the rule of respondeat superior.

For the foregoing reasons, a writ of certiorari should issue to the United States Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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